



# The State Bar *of California*

---

## **OPEN SESSION AGENDA ITEM MAY 2019 REGULATION AND DISCIPLINE COMMITTEE III.C**

**DATE:** May 16, 2019

**TO:** Members, Regulation and Discipline Committee

**FROM:** Melanie J. Lawrence, Interim Chief Trial Counsel

**SUBJECT:** Review of Selected Strategic Plan Objectives

---

The Regulation and Discipline Committee (RAD) periodically receives updates regarding the progress of State Bar 2017-2022 Strategic Plan (Plan or Strategic Plan) implementation as related to Plan Objectives that fall under RAD purview. This update focuses on an Objective that is delayed in implementation, as outlined below.

### **DELAYED STRATEGIC PLAN OBJECTIVE**

Goal 2, Objective H: Monitor improvements in the response to complaints regarding the unauthorized practice of law through tracking and reporting on complaints received, investigation timelines, civil filings, and law enforcement referrals.

OCTC has recently begun following up on the response to referrals to law enforcement agencies to determine the outcome. OCTC does track the number of civil filings and referrals to law enforcement. Since late 2017, OCTC has been applying the same time standards used in attorney misconduct cases, to cases implicating the unauthorized practice of law by non-attorneys. However, those standards have not been reduced to a policy directive.

### **ACTIVITIES TO DATE**

OCTC manager and supervisor staff have met personally, since late 2018, with 24 District Attorney's offices across the state. During those discussions, staff have explained the issues surrounding non-attorney unauthorized practice of law and OCTC's jurisdiction over these bad actors and our tools to respond to complaints. Staff have also explained how

OCTC's efforts are most successful when we partner with law enforcement. In most instances, staff have received an overall positive response to our outreach efforts.

In the course of our discussions with law enforcement partners, we have received feedback on how best to refer complaints to those agencies and have made adjustments accordingly. For example, some of the larger agencies, because of the volume of complaints we refer to them, have requested that rather than send individual referrals via mail, that we instead provide a spreadsheet via e-mail on a regular basis with details of the complaint as well as contact information for OCTC's assigned investigator.

Overall, our direct outreach has opened up the lines of communication between our office and law enforcement.

OCTC has recently employed a staff member through a Training & Development assignment (T&D)<sup>1</sup>, to follow-up on the outcome of law enforcement referrals, county by county, made in 2018 to the present. While we have only just begun this project, we have confirmed that in 32 matters we referred to law enforcement, none of them have resulted in any action on the part of law enforcement. In large part, offices tell us they prioritize what they consider to be more serious crimes ahead of these cases and that they lack the resources to devote to these cases. That seems to be mostly true where the referral relates to only one or a few instances of one non-attorney engaged in the unauthorized practice of law. Generally, law enforcement is more interested where a non-attorney's practice appears to be relatively large and potentially impacts more victims, and where the dollar amount of potential restitution is high.

OCTC is applying the same time standards for non-attorney unauthorized practice of law cases, as those for attorney misconduct cases. While OCTC has applied the same time standards to the investigation of these cases for more than 18 months, no formal policy directive has been issued. Non-Attorney Unauthorized Practice of Law matters are also prioritized according to the same case prioritization system as for attorney misconduct cases, wherein cases are given a P-1, P-2, or P-3 priority code.

## **CHALLENGES EXPERIENCED**

Earlier in the year, OCTC dedicated a staff member on a T&D assignment to follow-up on the outcomes of referrals to law enforcement. However, the assignment was abandoned because there was insufficient coverage for the staff member's regular workload. A new T&D assignment recently began for this project.

---

<sup>1</sup>T&D assignments allow the temporary loan or assignment of employees within or between State Bar Offices for up to six months, for the purposes of training and professional development. T&D Assignments are used to broaden the work experience of participating employees with the intent of increasing their skills and abilities and/or work experience.

We have encountered a lack of awareness and understanding on the part of law enforcement as to what constitutes the unauthorized practice of law. To that end, OCTC has offered to provide an expert witness in cases involving these crimes to assist in any such prosecution.

As we consider issuing policy directives regarding the timelines for investigating these cases, OCTC's ability to actually meet specific time goals will be impacted by the availability of resources. Also, as our outreach and visibility escalates, the potential for receiving more complaints increases, further impacting our ability to meet formalized timelines.

## **PLANNED NEXT STEPS**

As a result of our discussions with law enforcement, OCTC is in the process of preparing a tri-fold informational pamphlet on the unauthorized practice of law. A number of the offices we visited requested such a pamphlet and requested that both the State Bar's logo and the related agency's logo, be placed on it. The first pamphlets will be distributed to the Los Angeles County Department of Consumer and Business Affairs.

We will continue to follow-up on referrals made to law enforcement partners and document the results of those referrals.

We will develop a policy directive or Non-Attorney Unauthorized Practice of Law practice manual with timelines for investigating and resolving cases while keeping in mind our limited resources.